

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WINSTON WESLEY NOLES,
Plaintiff,

v.

NICK DIAL, KEITH SHORT,
Defendants.

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Cause No. 3:20-cv-03677-N-BK

DEFENDANTS' 12(b)(6) MOTION TO DISMISS
PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Dial who make and file this Motion to Dismiss Plaintiff's Original Complaint¹ ("Complaint") pursuant to F.R.C.P. 12(b)(6). For same, Defendant would state the following:

1. Plaintiff's Complaint asserts various Constitutional claims pursuant to 42 USC §1983². The asserted claims are inadequately pleaded and do not survive Defendant's Motion to Dismiss pursuant to F.R.C.P. 12(b)(6). Further, Plaintiff fails to sufficiently plead a claim which overcomes Defendant's qualified immunity defense.

2. Plaintiff's suit is barred by *res judicata*.

3. Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that he go hence without day, recover costs, including reasonable costs and attorney's fees, pursuant to 42

¹ Court's Docket # 03.

² *Id.* at pp. 3-4.

U.S.C. 1988, in this behalf expended and for such other and further relief, both general and special, to which Defendants may be justly entitled.

Respectfully submitted,

By: /s/ Joe C. Tooley

State Bar No. 20129750

510 Turtle Cove, Suite 112

Rockwall, Texas 75087

(972) 722-1058

(972) 722-1070 (Facsimile)

Joe@TooleyLaw.com

ATTORNEY FOR DEFENDANT NICK
DIAL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to Plaintiff, *pro se*, via email to winstonottonoles@gmail.com in accordance with the Federal Rules of Civil Procedure on this 19TH day of February, 2021.

/s/ Joe C. Tooley